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No. 02-1060

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

ROBERT S. LIDSTER, RESPONDENT.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000), prohibits police officers from conducting a checkpoint organized to investigate a prior offense, at which checkpoint law enforcement officers briefly stopped all oncoming motorists to hand out flyers about and look for witnesses to the offense, where the checkpoint was conducted exactly one week after — and at approximately the same time of day as — the offense, and where the checkpoint otherwise met the reasonableness standard articulated in *Brown v. Texas*, 443 U.S. 47 (1979).

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Illinois (Pet. App. 1a-22a) is reported at 202 Ill.2d 1, 779 N.E.2d 855 (2002). The opinion of the Appellate Court of Illinois, Second District (Pet. App. 23a-28a), is reported at 319 Ill.App.3d 825, 747 N.E.2d 419 (2d Dist. 2001). The oral ruling of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois (J.A. 30-31), is unreported.

JURISDICTION

The Supreme Court of Illinois entered judgment on October 18, 2002. The petition for a writ of certiorari was filed on January 9, 2003, and granted on May 5, 2003. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Following a bench trial, the Circuit Court of the Eighteenth Judicial Circuit convicted respondent of driving under the influence of alcohol, in violation of 625 ILCS 5/11-501(a)(2) (West 1996). The Illinois Appellate Court reversed the

conviction. Relying upon *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the court ruled that the informational checkpoint where respondent was apprehended effected an unreasonable seizure under the Fourth Amendment, and therefore that the Circuit Court should have quashed respondent's arrest and suppressed evidence regarding his field sobriety tests. The Illinois Supreme Court affirmed, agreeing with the Appellate Court that the checkpoint was *per se* unlawful under *Edmond* because it sought evidence related to a criminal investigation.

1. In the evening of August 30, 1997, Lombard police officers set up an informational checkpoint on the eastbound side of North Avenue in Lombard, Illinois. Pet App. 1a; J.A. 15. The sole purpose of the checkpoint was to find witnesses to a fatal hit-and-run accident that occurred on August 23, 1997, one week earlier, at the same location, and at the same time of day. Pet. App. 1a-2a; J.A. 23-24. The officers' hope was that someone leaving a late shift at work, having seen something the week prior but not having realized its seriousness at the time, would come forward with relevant information. J.A. 23. The officers were looking only for witnesses, not for the vehicle or driver actually involved in the hit-and-run. J.A. 24.

Detective Ray Vasil, who wore an orange reflective vest with the word "Police" on it, was stationed fifteen feet beyond the line formed by the motorists. Pet. App. 2a; J.A. 27. As each vehicle pulled up, Detective Vasil handed the driver a flyer requesting information about the accident, and asked if he or she had witnessed anything on the night in question. Pet. App. 2a; J.A. 15-16.

The flyer, entitled "ALERT" and "FATAL HIT & RUN ACCIDENT," read:

> The Lombard Police are looking for assistance in identifying the vehicle and driver involved in this accident[,] which killed a 70 year old bicyclist. The accident occurred on Saturday Morning August 23rd[,] 12:15 AM (15 minutes after midnight).

J.A. 9. The flyer described the suspect vehicle as follows:

> Suspect Vehicle
>
> 1980 – 1986
>
> Ford "Full Size" Pick-Up or
>
> Ford Bronco
>
> Damage: Right Front Headlight Area

J.A. 9. The flyer concluded by requesting that "anyone with information about the car or driver, or who may have witnessed the accident[,] please call the Lombard police at (630) 620-5955," and by promising that "calls will be kept confidential upon request." J.A. 9.

All eastbound cars on North Avenue passed through the checkpoint. J.A. 17-19, 24. Between six and twelve police and emergency vehicles, some or all with oscillating lights, were present. Pet. App. 2a; J.A. 27. Each vehicle's encounter with Detective Vasil took approximately ten to fifteen seconds. J.A. 24. Detective Vasil did not ask the driver for his or her name, did not ask to see a driver's license, did not ask for proof of insurance, and did not check to see if the driver was wearing a seat belt. J.A. 24-25.

As respondent passed through the checkpoint, he nearly struck Detective Vasil with his Mazda minivan. Pet. App. 2a; J.A. 19-21, 25. This led Detective Vasil to request respondent's driver's license and insurance card. Pet. App. 2a; J.A. 21. Because respondent slurred his speech and had the smell of alcohol on his breath, Detective Vasil directed respondent to a side street to perform field sobriety tests. Pet. App. 2a; J.A. 25-26. After performing those tests for another detective, respon-

dent was arrested and charged with driving under the influence of alcohol.

2. Respondent filed a pretrial motion to suppress his arrest and all resulting evidence on the ground that the checkpoint violated the Fourth Amendment. J.A. 5-9. On June 4, 1999, the Circuit Court conducted an evidentiary hearing on the motion. J.A. 10-32. After receiving testimony from Detective Vasil and hearing the argument of counsel, the court denied the motion. J.A. 30-31.

In support of its ruling, the Circuit Court noted that a supervisor, not a road officer, made the decision to implement the checkpoint; that all eastbound traffic on North Avenue was stopped; that there "was certainly a sufficient show of the official nature of the operation" in that there "were up to 12 squad cars or emergency vehicles with their lights on"; and that the stop was for a "minimum period of time." J.A. 30-31. The court further observed that the checkpoint was established "at the same time" as the accident "to determine if any witnesses at that same time of night of the same day would have seen anything." J.A. 30.

At his bench trial on September 27, 1999, respondent was found guilty of driving under the influence of alcohol. Pet. App. 3a. The Circuit Court sentenced respondent to one year of conditional discharge and required him to participate in counseling, to complete fourteen days in the Sheriff's Work Alternative Program, and to pay a $200 fine. Pet. App. 3a.

3. The Illinois Appellate Court reversed the conviction. Pet. App. 23a-28a. Relying upon *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the court concluded that the checkpoint was an unreasonable seizure under the Fourth Amendment. Pet. App. 23a-28a.

The Appellate Court cited *Edmond* for the proposition that "the usual requirement of individualized suspicion" would not be suspended "where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." Pet. App. 25a-26a. The court found that *Edmond* governed the Lombard checkpoint because its purpose — finding witnesses to an unsolved crime — "was to seek evidence of 'ordinary criminal wrongdoing'" and "to search for evidence of a crime." Pet. App. 26a. According to the Appellate Court, "*Edmond* strongly suggests that a criminal investigation can never be the basis for a roadblock, at least absent exigent circumstances not present here." Pet. App. 27a.

4. In a four-to-three decision, the Illinois Supreme Court affirmed. Pet. App. 1a-22a. The majority first noted that an informational checkpoint "does not fall within the scope of the limited exceptions heretofore approved" by this Court in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (immigration checkpoints), and *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (sobriety checkpoints). Pet. App. 7a. The majority then stated that the Lombard checkpoint was "designed primarily to serve the general interest in crime control," and therefore was precisely the type of intrusion that *Edmond* held *per se* unlawful. Pet. App. 7a.

The majority rejected the State's contention that *Edmond* was inapposite because the Lombard checkpoint was intended not "to ferret out evidence that the motorists *themselves* had committed [a] crime," but rather to canvass for evidence regarding a known but unsolved crime that had already been committed by *another* motorist. Pet App. 7a-8a (emphasis added). Finally, the majority expressed its concern that validating informational roadblocks under the Fourth Amendment would "ha[ve] the potential to make roadblocks 'a routine part of American life'" in light of the large numbers of

murders and other serious felonies that take place every year. Pet. App. 8a-9a (quoting *Edmond*, 531 U.S. at 42).

Joined by two of his colleagues, Justice Thomas dissented on the ground that *Edmond* does not govern a "strictly informational roadblock," by which he meant a roadblock "involving police canvassing for information about a specific, known crime." Pet. App. 12a. According to the dissent, the majority's contrary conclusion rested upon a misinterpretation of the term "ordinary crime control" in *Edmond*. That term, the dissent explained, means detecting unknown crimes committed by the motorists being stopped, as opposed to seeking information from motorists about specific but unsolved crimes that had already been committed by others. Pet. App. 14a-15a. To support its view, the dissent cited *Edmond*'s admonition that "[w]e cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." Pet. App. 14a (quoting *Edmond*, 531 U.S. at 44). Because the Lombard police "did not seek to interrogate and inspect motorists to ferret out evidence that the motorists themselves had committed a crime that was as yet unknown to police," the dissent concluded that *Edmond* did not govern the Lombard checkpoint. Pet. App. 15a.

Having determined that the checkpoint was not *per se* unlawful under *Edmond*, the dissent proceeded to evaluate the checkpoint against the reasonableness factors articulated in *Brown v. Texas*, 443 U.S. 47 (1979). First, the dissent explained that the checkpoint served the important public interest of solving a fatal hit-and-run accident. Pet. App. 20a. Second, the dissent noted that the checkpoint was "narrowly tailored for maximum effectiveness" in that "the timing of the roadblock, exactly one week after the crime at approximately the same time of day, was purposely designed to stop motorists who might routinely travel that route at the end of their work

shift." Pet. App. 20a. Third, the dissent found that the checkpoint was objectively unobtrusive, in that motorists "were detained for approximately 10 to 15 seconds, just long enough for police to hand out a flyer and alert motorists of the accident of the previous week" and "were not asked for their names, driver's licenses, or insurance cards." Pet. App. 21a. Finally, the dissent concluded that the checkpoint was subjectively unobtrusive given "the official nature of the operation" and the fact that "all eastbound traffic was stopped" "in a systematic and preestablished manner." Pet. App. 21a.

SUMMARY OF ARGUMENT

I. The Supreme Court of Illinois erred in concluding that the Lombard checkpoint is governed by *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). *Edmond* held that a suspicionless checkpoint is *per se* invalid under the Fourth Amendment only if its "primary purpose was to detect evidence of ordinary criminal wrongdoing." *Id.* at 41. *Edmond* itself, together with the legal and factual backdrop against which *Edmond* was decided, makes clear that the *per se* rule is limited to checkpoints designed to detect unlawful activity by the motorists themselves. *Edmond* does not apply to the informational checkpoint here, at which a police detective handed out flyers and briefly asked questions in an effort to find witnesses to a known but unsolved crime committed one week earlier by another motorist.

II. Because the Lombard checkpoint is not governed by *Edmond*, its validity depends upon the factors articulated in *Brown v. Texas*, 443 U.S. 47 (1979), and applied in this Court's other checkpoint cases. Those factors are easily satisfied here. First, the checkpoint served the important public purpose of finding witnesses to an unsolved homicide. Second, the time and place of the checkpoint were carefully tailored to advance the investigation. Third, the intrusion on the motorists' liberty

was minimal. At each encounter with Detective Vasil, which lasted approximately ten to fifteen seconds, Vasil did not ask motorists for their names, driver's licenses or proof of insurance, and did not check to see if motorists were wearing seat belts. The official nature of the checkpoint, the fact that all motorists were stopped, and the officers' lack of discretion are all hallmarks of checkpoints that this Court has consistently found unobtrusive. Finally, the Illinois Supreme Court's argument that validating the Lombard checkpoint would result in the proliferation of informational checkpoints ignores not only this Court's roadblock cases, but also the constraints imposed by the *Brown* reasonableness factors.

ARGUMENT

I. The Lombard Checkpoint Is Not Invalid Under *City of Indianapolis v. Edmond*.

The Fourth Amendment requires that searches and seizures be reasonable. Although seizures are ordinarily unreasonable absent individualized suspicion of wrongdoing, "the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976).

This Court has validated the suspicionless seizure of vehicles at certain types of checkpoints. See *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (sobriety checkpoint designed to identify drunk drivers); *Martinez-Fuerte*, *supra* (Border Patrol checkpoints designed to intercept illegal aliens); cf. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (suggesting that roadblock designed to verify driver's licenses and vehicle registrations would be permissible). In determining whether such checkpoints are reasonable under the Fourth Amendment, this Court considers the factors set forth in *Brown v. Texas*, 443 U.S. 47 (1979), and applied in *Sitz*, *Martinez-Fuerte* and *Prouse*. Generally speaking, those factors balance the

government's interest in implementing the checkpoint against the severity of the intrusion on the motorist.

In *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), this Court invalidated checkpoints whose primary purpose was to discover and interdict illegal narcotics in the vehicles passing through the checkpoints. In so ruling, the Court did not invoke the *Brown* reasonableness factors. Rather, the Court held that "a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing" is, absent exigencies not present here, *per se* unlawful under the Fourth Amendment. *Edmond*, 531 U.S. at 41. That is, "[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints * * *, stops can only be justified by some quantum of individualized suspicion." *Id.* at 47. The Court was careful to limit the scope of its holding, making clear that its decision did not "speak to other intrusions aimed primarily at purposes beyond the general interest in crime control." *Id.* at 48.

The dispositive question in this case — at least for purposes of determining whether *Edmond* renders the Lombard informational checkpoint *per se* unlawful without regard to the *Brown* reasonableness factors — is whether the checkpoint served "primarily general crime control purposes" or, alternatively, whether it was "aimed primarily at purposes beyond the general interest in crime control." That question, in turn, rests upon what exactly it means for a checkpoint to serve "primarily general crime control interests."

The Illinois Supreme Court gave that term an impermissibly broad reading. According to the majority opinion, a checkpoint has the primary purpose of "general crime control" not only if it seeks to detect whether the motorists themselves are committing unlawful acts, but also if it seeks to advance any law enforcement purpose whatsoever, including (as here)

canvassing motorists for information about a known but unsolved crime committed by another.

It is no doubt true that certain language used in *Edmond* — such as "detect evidence of ordinary criminal wrongdoing" and "general crime control" — could, if viewed in isolation, be interpreted to encompass checkpoints where motorists are stopped for *any* law enforcement purpose, including to canvass citizens for information about crimes committed by others. But the language in question was used in context. The context demonstrates that "general crime control" does not encompass *all* law enforcement purposes, but instead is limited to instances where, as in *Edmond* itself, police officers intend to detect whether individuals actually passing through the checkpoint happen to be engaged in unlawful activity.

Edmond addressed this very point when it emphatically rejected the suggestion that it had adopted a "non-law-enforcement primary purpose test." *Id.* at 44 n.1. Rather, the Court held, *Edmond* "turn[ed] on the fact that the primary purpose of the Indianapolis checkpoints is to advance the general interest in crime control." *Ibid.* In drawing a distinction between checkpoints that serve "law-enforcement" purposes and those that serve "the general interest in crime control," the Court recognized that a checkpoint can serve a "law-enforcement" purpose without being classified as one that advances "the general interest in crime control." That is, not all law-enforcement-related checkpoints serve "the general interest in crime control," which means that not all law-enforcement-related checkpoints are *per se* unlawful. See also *Sitz*, 496 U.S. at 450 (rejecting contention that "there must be a showing of some special governmental need 'beyond the normal need' for criminal law enforcement before a balancing analysis is appropriate").

An informational checkpoint designed to find witnesses to and information about an earlier and unsolved crime serves "law-enforcement" purposes, but it does not "advance the general interest in crime control," and therefore is not *per se* invalid under *Edmond*. As the dissent below correctly observed (Pet. App. 14a), the following passage from *Edmond* makes this clear:

> We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the *generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.*

531 U.S. at 44 (emphasis added). This passage, particularly the second sentence, confirms that when *Edmond* spoke of using a checkpoint to advance "the ordinary enterprise of investigating crimes," it meant investigating crimes by those passing through the checkpoint. Consequently, *Edmond* does not govern *all* law enforcement-related checkpoints, but only a particular subset of law enforcement-related checkpoints — *i.e.*, those used as a dragnet to detect unknown, unlawful activity by the motorists themselves.

Any doubt regarding *Edmond*'s scope dissipates upon considering the backdrop against which *Edmond* was decided. This Court's checkpoint cases, including *Edmond*, all involved circumstances where law enforcement officers were attempting to determine whether the motorists themselves were engaging in unlawful activity. See *Edmond*, 531 U.S. at 40-41 (determining presence of narcotics in vehicle); *Sitz*, 496 U.S. at 450-451 (determining whether driver was intoxicated); *Martinez-Fuerte*, 428 U.S. at 545 (determining whether vehicle contained illegal aliens); cf. *Prouse*, 440 U.S. at 650

(determining whether motorist had valid driver's license and vehicle registration); *Carroll v. United States*, 267 U.S. 132, 153-154 (1925) ("It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor * * * * "). Thus, when *Edmond* spoke of "the ordinary enterprise of investigating crimes," 531 U.S. at 44, it could only have meant detecting previously unknown criminal activity by the occupants of the vehicle being stopped, as opposed to seeking from those occupants information about known, unsolved crimes that had been committed by others.

The Illinois Supreme Court offered no basis, other than its own misreading of *Edmond*, to declare informational checkpoints *per se* invalid under the Fourth Amendment. Such a rule would run contrary to settled constitutional principles. This Court has long recognized that "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process" is a "traditional function of police officers in investigating crime." *Miranda v. Arizona*, 384 U.S. 436, 477 (1966). It follows that "[l]aw enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *United States v. Drayton*, 536 U.S. 194, 200 (2002); accord, AMERICAN LAW INSTITUTE, MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 110.1(1) (1975) ("A law enforcement officer may, subject to the provisions of this Code or other law, request any person to furnish information or otherwise cooperate in the investigation or prevention of crime."). Moreover, "[i]t is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement." *Miranda*, 384 U.S. at 477-478.

Although canvassing typically takes place by approaching pedestrians or walking door-to-door, the same considerations hold when the police canvass motorists. There is, of course, a practical difference in that officers can put questions to motorists and hand them flyers only by bringing their vehicles to a halt. But that provides no conceivable basis under the Fourth Amendment to erect a rigid distinction between canvassing pedestrians (permissible) and canvassing motorists (*per se* invalid). See *State v. Gerrish*, 311 Or. 506, 513, 815 P.2d 1244, 1248 (1991) (where "flagging [a motorist] down and directing him to stop were the only means available to get [his] attention long enough to request information," such actions were "analogous to tapping a citizen on the shoulder at the outset to get a citizen's attention") (internal quotations omitted). Indeed, the Illinois Supreme Court's holding creates the anomaly of "guarantee[ing] a motorist greater freedom of movement than is afforded a pedestrian." *State v. Holmes*, 311 Or. 400, 411, 813 P.2d 28, 34 (1991).

Accordingly, in concluding that *Edmond* governs informational checkpoints, the Illinois Supreme Court did more than simply misinterpret *Edmond*. The court also erected a nonsensical and counterintuitive distinction under the Fourth Amendment between (i) canvassing pedestrians for the purpose of obtaining information about known but unsolved crimes and (ii) canvassing motorists for the same exact purpose. *Edmond*, by its own terms, does not extend to informational checkpoints, and it should not be so extended.

Here, there is no dispute that the primary purpose of the Lombard checkpoint was to seek information about and find witnesses to the fatal hit-and-run accident that had occurred at the same place exactly one week prior. By contrast to the checkpoint in *Edmond*, the Lombard checkpoint was not implemented to determine whether the motorists themselves were engaging or had engaged in unlawful activity.

Consequently, the Lombard checkpoint is not governed by *Edmond* and therefore is not *per se* invalid under the Fourth Amendment. See *Burns v. Commonwealth*, 261 Va. 307, 322, 541 S.E.2d 872, 883 (2001) (*Edmond* does not govern roadblock whose purpose was to "canvas[s] drivers who were passing through the area, to see whether they had seen or heard anything during the time period when the crime [a murder] had probably been committed the previous day"), cert. denied, 534 U.S. 1043 (2001).

II. The Lombard Checkpoint Satisfies The Reasonableness Factors Applied In This Court's Checkpoint Cases.

Because the Lombard checkpoint is not *per se* unlawful under *Edmond*, determining its validity under the Fourth Amendment requires application of the reasonableness factors set forth in *Brown* and applied in *Sitz*, *Prouse*, and *Martinez-Fuerte*. Those factors are "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown*, 443 U.S. at 51.

A. The checkpoint served a weighty public concern.

There can be little doubt that the Lombard checkpoint served a weighty public concern. The checkpoint's primary purpose — indeed, its only purpose — was to find witnesses to and information about an unsolved homicide. That purpose, as the Supreme Court of Virginia recognized, qualifies as a weighty public concern. *Burns*, 261 Va. at 322, 541 S.E.2d at 883 ("the fact that a murder had occurred was a matter of grave public concern"). The purpose is at least as weighty, if not more so, than the purposes that this Court has found sufficient under the Fourth Amendment. See *Edmond*, 531 U.S. at 37-38 (verifying driver's licenses and vehicle registrations) (citing *Prouse*, 440 U.S. at 663); *Sitz*, 496 U.S. at 451 (removing

drunk drivers from the road); *Martinez-Fuerte*, 428 U.S. at 556 (interdicting illegal aliens).

B. The checkpoint was designed to advance the public's interest in solving the crime.

The Lombard checkpoint also was carefully designed to advance the public's interest in solving the fatal hit-and-run accident. As an initial matter, a vehicular checkpoint was uniquely appropriate to advance an investigation into the hit-and-run accident. Because the lone victim had been killed and the perpetrator left no fingerprints or DNA evidence, the Lombard police appropriately concluded that eyewitness information from other motorists was important to the investigation.

Moreover, the Lombard police did not arbitrarily choose the time or place of the checkpoint. Rather, the checkpoint was set up at the precise location of the hit-and-run accident, exactly one week later at the same time of day, in order to increase the likelihood of finding motorists who might have relevant information. J.A. 23-24. As the trial court correctly concluded (J.A. 30-31), it was entirely reasonable for the Lombard police to believe that motorists who regularly travel that route might have information regarding a hit-and-run that occurred at the same place and the same time of night the previous week.

That the Lombard police might have had other means to obtain evidence or find witnesses is immaterial. As this Court's checkpoint cases caution, law enforcement authorities, who have the best understanding of how to conduct an effective criminal investigation and the available resources, must be given the latitude to implement appropriate tools to solve crimes that might otherwise remain unsolved. See *Sitz*, 496 U.S. at 453-454 ("for purposes of Fourth Amendment analysis, the choice among * * * reasonable alternatives remains with the governmental officials who have a unique understanding of, and

responsibility for, limited public resources, including a finite number of police officers"); *Martinez-Fuerte*, 428 U.S. at 566 ("deference is to be given to the administrative decisions of higher ranking officers").

C. The checkpoint was minimally intrusive.

The Lombard checkpoint imposed a minimal intrusion on the liberty of motorists. This is so with respect to both the "objective" and "subjective" aspects of the intrusion. *Sitz*, 496 U.S. at 452.

The "objective" aspect of an intrusion is "measured by the duration of the seizure and the intensity of the investigation." *Ibid.* Here, each encounter with Detective Vasil lasted ten to fifteen seconds. J.A. 24. This was briefer than the delays imposed upon the motorists in *Sitz*, 496 U.S. at 448 ("approximately 25 seconds"), and *Martinez-Fuerte*, 428 U.S. at 547 ("average length of an investigation in the secondary inspection area is three to five minutes"). Moreover, Detective Vasil did not ask motorists for their names, driver's licenses or proof of insurance, and did not check to see if motorists were wearing seat belts. J.A. 24-25. Rather, Vasil merely handed each motorist a flyer and asked if he or she had information regarding the hit-and-run. J.A. 15. This caused no more of an intrusion than checkpoints approved in *Martinez-Fuerte*, 428 U.S. at 558 (occupants subject to visual inspection, questioning, and possible requests for documents), and *Sitz*, 496 U.S. at 450 (motorists subject to "questioning and observation").[1]

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[1] Because his minivan almost struck Detective Vasil, respondent was asked for his driver's license and registration, and because he slurred his words and had alcohol on his breath, respondent was sent to a side street to perform field sobriety tests. J.A. 19-21, 25. Given the objective evidence of respondent's apparent intoxication, those additional measures were justified under the Fourth Amendment. See *Smith v. Ball State Univ.*, 295 F.3d 763, 768-769 (7th Cir. 2002); *Holmes*, 311 Or. at 414, 813 P.2d at 36.

Indeed, the Lombard checkpoint caused less of an intrusion than those approved in *Martinez-Fuerte* and *Sitz* and those that the Court suggested it would approve in *Prouse*. The reason is that the Lombard checkpoint — unlike the checkpoints in *Martinez-Fuerte*, *Sitz* and *Prouse* — did not seek to uncover unlawful activity by the motorists themselves. The fact that the motorists were not the targets of the officers' law enforcement effort reduced, if not eliminated, the potential adversarial nature of the encounter. And because the motorists did not have to fear adverse consequences from the informational checkpoint, they would be less likely "to be frightened" than motorists stopped at sobriety, illegal alien or driver's license checkpoints. *Sitz*, 496 U.S. at 453 (internal quotations omitted).[2]

Equally minimal was the "subjective" aspect of the intrusion, which focuses on the "potential for generating fear and surprise." *Id.* at 452. As this Court recognized:

> '[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at

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[2] For the same reasons, the motorists' encounters with Detective Vasil were arguably less intrusive than encounters that do not even rise to the level of Fourth Amendment seizures. See *Drayton*, 536 U.S. at 198 (no seizure where officers stated: "We're conducting bus interdiction [sic], attempting to deter drugs and illegal weapons being transported on the bus"); *Florida v. Bostick*, 501 U.S. 429, 431-432 (1991) (no seizure where officers on a bus "explained their presence as narcotics agents on the lookout for illegal drugs"); *INS v. Delgado*, 466 U.S. 210, 212 (1984) (no seizure where INS agents, "after identifying themselves," asked factory employees "from one to three questions relating to their citizenship").

> night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.'

Martinez-Fuerte, 428 U.S. at 558 (quoting *United States v. Ortiz*, 422 U.S. 891, 894-895 (1975)); see also *Prouse*, 440 U.S. at 657 (same). Here, the official nature of the checkpoint was made obvious by the presence of police and emergency vehicles, the oscillating lights, and Detective Vasil's orange reflective vest with the word "Police" on it. In this respect, the Lombard checkpoint is indistinguishable from the checkpoints approved in *Martinez-Fuerte* and *Sitz*.

Moreover, Lombard officers exercised no discretion over which vehicles would be stopped, but rather stopped all eastbound traffic on North Avenue. J.A. 18-19. This is crucial under this Court's precedents, which distinguish "arbitrary invasions solely at the unfettered discretion of officers in the field" from checkpoints "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown*, 443 U.S. at 51; cf. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, *supra*, at 266 (with respect to roadblocks implemented to apprehend a suspected felon, "a principal safeguard in the provision is that the roadblock must be applied to all or most of the cars traveling in a particular direction. Thus the humiliation implicit in being singled out as an object of suspicion is absent.").

In sum, the Lombard checkpoint imposed only a minimal intrusion on motorists, and was justified by the public's significant interest in solving an unsolved fatal hit-and-run accident.

D. Validating the Lombard checkpoint would not result in an unacceptable proliferation of informational checkpoints.

Finally, we address the Illinois Supreme Court's concern that validating the Lombard checkpoint under the Fourth Amendment would result in the Nation's roads being inundated with informational roadblocks. As the majority opinion put it:

> In 2000, 870 murders, 49,652 assaults, 25,168 robberies, 77,947 burglaries, 306,805 thefts, 55,222 motor vehicle thefts, and 2,899 arsons were known by police to have been committed in Illinois. * * * Should the police have been allowed to set up roadblocks to obtain information from potential witnesses for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond*.

Pet. App. 8a-9a.

The Illinois Supreme Court's argument proves too much, for if it were valid, then *Sitz* and *Martinez-Fuerte* would have been decided differently. Just as there is no theoretical limit to the number of informational checkpoints that might be implemented to solve the millions of crimes committed every year, there likewise is no theoretical limit to the number of checkpoints that might be implemented to intercept and apprehend intoxicated drivers, unlicenced drivers or illegal aliens. The lack of such a theoretical limit did not give cause to

invalidate the checkpoints in *Sitz* and *Martinez-Fuerte*, and it should not do so here.

The reasoning is two-fold. First, the finite resources of law enforcement agencies would make it extremely difficult, if not impossible, to set up informational checkpoints for a great many serious crimes. Thus, although there may be no *theoretical* limit to the number of possible informational checkpoints, there are very real *practical* limits. Those limits are suggested not only by common sense, but by the undeniable reality that in the years since *Sitz*, *Prouse* and *Martinez-Fuerte* were decided, our roads have not been inundated with checkpoints to intercept intoxicated drivers, illegal aliens, or motorists without valid driver's licenses or vehicle registrations. Cf. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, *supra*, at 266 (with respect to roadblocks implemented to apprehend a suspected felon, "the expense to law enforcement agencies and public intolerance of the inconvenience impose a check on unreasonable recourse to this power").

Second, and more important, the *Brown* reasonableness factors impose significant *legal* limits on the use of informational and other checkpoints. See *Martinez-Fuerte*, 428 U.S. at 565 (the "reasonableness of checkpoint stops * * * turns on * * * factors that are not susceptible to the distortion of hindsight, and therefore will be open to post-stop review"). As shown above, a checkpoint must serve an important public purpose, be carefully tailored to solving the crime under investigation, and not intrude upon motorists too severely.

Given the fact-intensive nature of the reasonableness inquiry, it is not possible to catalog in advance which checkpoints, implemented under which circumstances and at which particular locations, would or would not be valid. But it is clear that the checkpoint in this case falls on the reasonable side of the line — it was implemented to solve a homicide; its

time and place were carefully designed to maximize the chance of finding witnesses and relevant information; and it was minimally intrusive, both objectively and subjectively. The Lombard checkpoint was unimpeachable under this Court's jurisprudence and eminently reasonable under the Fourth Amendment.

CONCLUSION

The judgment of the Supreme Court of Illinois should be reversed.

Respectfully submitted.

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